

California Regional Water Quality Control Board  
Santa Ana Region  
June 6, 2008

**ITEM:** 16

**SUBJECT:** Order No. R8-2008-0066 Affirming Administrative Civil Liability Complaint  
No. R8-2008-0010, Niagara Bottling, LLC, Ontario, San Bernardino  
County

**BACKGROUND**

On March 19, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2008-0010 to Niagara Bottling, LLC (Niagara Bottling) for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit) and for violations of Section 13376 of the Water Code. In response to additional information provided by the discharger, the March 19, 2008 ACL was revised on May 27, 2008. In the revised ACL (attached), the Assistant Executive Officer proposed an assessment of \$30,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject or modify the proposed order imposing an assessment of \$30,000 on Niagara Bottling.

ACL No. R8-2008-0010 was issued by the Assistant Executive Officer to Niagara Bottling for failing to obtain coverage under the General Permit and for discharging unauthorized non-storm water without a permit.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee with the State Water Resources Control Board. Niagara Bottling, located at 2560 East Philadelphia in Ontario, primarily bottles water, and is in part described by Standard Industrial Classification (SIC) code 2086. Facilities with this SIC code are required to get permit coverage if industrial materials, equipment or activities are exposed to storm water. If there is no exposure, then a Notice of Non-applicability should be filed.

Niagara Bottling submitted a Notice of Non-Applicability on October 31, 2004; however, inspections conducted by the City of Ontario on July 21, 2005, determined that the facility should be covered under the General Permit. City staff observed exposure of materials and a minimum of 4,000 gallons of non-storm water being discharged from Niagara Bottling to Cucamonga Channel. At that time, City of Ontario staff requested that Niagara Bottling apply for General Permit coverage by August 22, 2005. Niagara Bottling did not apply for permit coverage by the deadline imposed by the City. On March 6, 2006, City staff again requested that Niagara Bottling apply for General Permit coverage. Again,

Niagara Bottling did not obtain permit coverage. On December 28, 2006, Regional Board staff issued a Notice of Non-compliance (NNC) to Niagara Bottling, via certified mail, requiring the facility operator to apply for General Permit coverage. The return receipt shows it was received on January 4, 2007. Permit coverage was not obtained; so on April 5, 2007, Regional Board staff issued a second NNC to Niagara Bottling, via certified mail. The return receipt shows it was received on April 9, 2007. The facility operator was required to obtain permit coverage by May 7, 2007, to avoid mandatory penalties. Permit coverage was not obtained by the May 7, 2007, deadline.

In both NNCs, Board staff requested submittal of a Notice of Intent (NOI) for coverage under the General Permit. Both NNCs also identified the mandatory penalty for failure to submit a NOI. The second NNC required that the NOI be submitted by May 7, 2007.

On October 4, 2007, Board staff inspected the facility and spoke with Ms. Liz Boughey. At that time, conditions of exposure were observed and Board staff reiterated the requirement for the facility operator to obtain permit coverage.

On December 26, 2007, the State Board received an NOI from Niagara Bottling and issued a WDID number (8 361021366) for the facility.

Niagara Bottling is also alleged to have violated Section 13376 of the Water Code by discharging unauthorized non-storm from a sand filter. City staff observed at least 4,000 gallons of wastewater discharges on July 21, 2005. Pursuant to Section 13385 of the Water Code, a regional board may impose civil liability administratively for violations of Section 13376. The maximum penalty for this violation is \$10,000 for one day of violation plus an additional liability of \$10 per gallon for any discharge over 1,000 gallons that was not cleaned up  $[(4,000 \text{ gallons} - 1,000 \text{ gallons}) \times \$10 \text{ per gallon} = \$30,000]$ .

Niagara Bottling failed to obtain coverage under the General Permit within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33 requires that the Board impose a mandatory penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors include the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits, or savings resulting from the violation, and other matters as justice may require. These factors are discussed in the attached ACL.

After consideration of these factors, the Assistant Executive Officer proposed that a penalty be imposed on Niagara Bottling in the amount of \$30,000. This includes a \$5,000 mandatory penalty for violations of Section 13399.30 + \$10,000 for one day of violation per Section 13385 + \$15,000 based on flow  $(4,000 \text{ gallons} - 1,000 \text{ gallons} \times \$5/\text{gallon})$ .

After a pre-hearing meeting on April 24, 2008, Niagara Bottling provided additional information related to the non-storm water discharges and the General Permit coverage. Based on the information provided, the ACL was revised on May 27, 2008.

### **RECOMMENDATION**

Board staff recommends that the Board adopt Order No. R8-2008-0066 affirming the assessment of \$30,000 specified in the Administrative Civil Liability Complaint, as revised on May 27, 2008.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2008-0066</b>
	)	<b>for</b>
<b>Niagara Bottling, LLC</b>	)	<b>Administrative Civil Liability</b>
<b>5675 East Concours Street</b>	)	
<b>Ontario, CA 91764</b>	)	
	)	
<b>Attn: Brian Hess</b>	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on June 6, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0010, dated March 18, 2008 revised on May 27, 2008), and on the recommendation for the imposition of penalties pursuant to Water Code Sections 13385 and 13399.33 in the amount of \$30,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit). The General Permit requires Niagara Bottling, LLC (Niagara Bottling) to obtain permit coverage prior to the start of operations. Board staff sent two certified Notices of Noncompliance (NNCs) to Niagara Bottling, the first one on December 28, 2006 and the second one on April 5, 2007. These NNCs notified Niagara Bottling that the facility is required to obtain coverage under the General Permit and that there is a mandatory penalty for not obtaining coverage under the General Permit. Coverage under the General Permit is obtained by filing a Notice of Intent (NOI). The second NNC required Niagara Bottling to submit the NOI by May 7, 2007. Niagara Bottling failed to comply with the NNCs. On December 26, 2007, State Board received an NOI from Niagara Bottling and the facility was issued WDID No. 8 361021366.
2. Niagara Bottling failed to submit a NOI within 60 days from the date of the original NNC. Furthermore, Niagara Bottling was discharging unauthorized non-storm water without a permit in violation of Water Code Section 13376.
3. Water Code Section 13399.30 requires the Board to impose penalties described in subdivision (a) of Section 13399.33 if a discharger fails to submit the required NOI to the Board within sixty (60) days from the date on the original NNC.
4. Water Code Section 13399.33(a) requires the Board to assess a mandatory minimum penalty of five thousand dollars (\$5,000) for failure to obtain coverage under the

General Permit for each year of violation. Water Code Section 13385 provides for penalties for violations of Section 13376.

5. On March 19, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0010 to Niagara Bottling proposing that the Board impose a penalty of \$55,000 on Niagara Bottling for the violations cited above. In response to additional information provided by Niagara Bottling on May 1, 2008, the March 19, 2008 ACL was revised on May 27, 2008. The revised ACL proposes a penalty of \$30,000.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385 and 13399.33(a), a penalty shall be imposed on Niagara Bottling, in the amount of \$30,000, as proposed in Complaint No. R8-2008-0010 (as revised on May 27, 2008) for the violations cited, payable as set forth below.

1. Niagara Bottling shall pay \$30,000 to the State Water Resources Control Board by July 7, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on June 6, 2008.

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Gerard J. Thibeault  
Executive Officer

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION

In the Matter of:

Niagara Bottling, LLC  
5675 East Concours Street  
Ontario, CA 91764

Attn: Brian Hess

COMPLAINT NO. R8-2008-0010  
for  
ADMINISTRATIVE CIVIL LIABILITY  
(Revised on May 27, 2008)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Niagara Bottling, LLC (hereinafter Niagara Bottling) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), must impose liability under Section 13399.33 and may impose additional liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint may be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on June 6, 2008, at the City Council Chambers of Santa Ana, located at 22 Civic Center Plaza Road in Santa Ana, California. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Niagara Bottling is alleged to have violated the California Water Code by allowing the discharge of pollutants to waters of the United States without filing a Report of Waste Discharge as required under Section 13376 of the Water Code.
5. This complaint is based on the following facts:
  - a) Niagara Bottling is a bottled water company with a facility located at 2560 East Philadelphia Avenue in Ontario, California. It bottles water for private labels and commercial resale. The facility also manufactures plastic bottles at the facility.
  - b) On July 21, 2005, San Bernardino County Flood Control District staff observed an approximately 100 gallon-per-minute (gpm) discharge from the facility to Cucamonga Creek. This discharge was coming from the sand filters.

- c) On the same day, City of Ontario staff also observed non-storm water discharges from the facility, including discharges from a sand filter unit. These flows entered a storm drain inlet on the southwest side of the property that discharges to Cucamonga Creek. City staff instructed Niagara Bottling to cease unauthorized discharges and to obtain appropriate permit coverage.
- d) During the July 21, 2005 inspection, City staff noted water bottle lids, trash and sediment near storm drain inlets in the loading dock area and oil drums and batteries stored outdoors. City staff requested Niagara Bottling to implement proper housekeeping practices, including storage of oil drums and batteries in a spill containment area.
- e) Industrial facilities operating under specified Standard Industrial Classification (SIC) codes are required to obtain coverage under State Board Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (General Permit). City staff determined that operations at Niagara Bottling needed to be regulated under the General Permit and required the facility to obtain coverage under the General Permit. On July 21, 2005, the City issued a Notice of Violation to the facility for the violations noted above.
- f) On March 8, 2006, City staff conducted a follow up inspection of the facility and noted that the facility had developed a Storm Water Pollution Prevention Plan (SWPPP) that was not site specific and that the facility had not obtained coverage under the General Permit. There were no significant improvements in the housekeeping practices; plastic pellets were observed on the pavement at the loading dock and trash bins were uncovered; vehicle maintenance and mobile vehicle washing were occurring outdoors; batteries were still stored outside without secondary containment; and a 250-gallon waste oil container was stored on an undersized spill containment pallet. Again, City staff instructed Niagara Bottling to improve housekeeping practices, including proper handling, containment and storage of raw materials, batteries, waste oil and other waste products. On March 8, 2006, the City issued a second Notice of Violation for the violations noted above and required the facility to obtain coverage under the General Permit.
- g) On December 28, 2006, Regional Board staff issued a Notice of Non-compliance (NNC) to Niagara Bottling. The NNC required Niagara Bottling to file a Notice of Intent (NOI) to obtain coverage under the General Permit by January 29, 2007. In addition, the NNC required Niagara Bottling to prepare a site-specific SWPPP and to implement appropriate pollution control measures. Niagara Bottling failed to comply with the NNC.
- h) On April 5, 2007, Regional Board staff issued a second NNC that specified a deadline of May 7, 2007 for Niagara Bottling to obtain coverage under the General Permit. Niagara Bottling again failed to comply with the second NNC.

- i) On October 4, 2007, Regional Board staff inspected Niagara Bottling's facility. Staff observed inadequate housekeeping, uncovered trash bins, uncovered chemicals in the outdoor vehicle maintenance area, and undersized secondary containment. Staff reiterated the need for Niagara Bottling to obtain coverage under the General Permit and to comply with the terms and conditions of the Permit. Niagara Bottling obtained permit coverage on December 28, 2007.
6. Niagara Bottling is alleged to have violated Sections 13376 and 13399.30(c)(2) of the California Water Code. Niagara Bottling violated Section 13376 by failing to file a report of waste discharge prior to the discharge of pollutants. Pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required NOI to the Regional Board within 60 days from the date on which the original NNC was sent, the Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
7. Pursuant to Section 13385 of the Water Code, a regional board may impose civil liability administratively for violations of Section 13376. On July 21, 2005, Niagara Bottling discharged wastewater in violation of Section 13376. The maximum penalty for this violation is \$10,000 (one day of violation at \$10,000 per day) plus an additional liability of \$10 per gallon for any discharge over 1,000 gallons that was not cleaned up. City/County staff observed the discharge for at least 40 minutes (100 gpm X 40 minutes = 4,000 gallons). At \$10/gallon, the maximum assessment based on the discharge volume is \$30,000 ( $[4,000 - 1,000 = 3,000] \times \$10 = \$30,000$ ).
8. In addition, pursuant to Section 13399.30(c)(2) of the California Water Code, if a discharger fails to submit the required NOI to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent, the Regional Board shall impose the penalties described in subdivision (a) of Section 13399.33 of the California Water Code.
9. Pursuant to Section 13399.33(a) of the California Water Code, the Regional Board shall administratively impose a mandatory penalty in an amount that is not less than five thousand dollars (\$5,000) per year of noncompliance or fraction thereof, unless the Regional Board makes express findings based on specific factors listed in Section 13399.33(a)(2). These factors are the same as those discussed under Paragraph 11, below. The mandatory penalty for this violation is \$5,000 based on one year of violation.
10. The total maximum penalty per Sections 13385 and 13399 of the Water Code is \$45,000 (\$10,000/day for one day of violation + \$30,000 @ \$10/gallon for 3,000 gallons + \$5,000/yr for three years of violation). Niagara Bottling saved approximately \$6,416 by not obtaining permit coverage and by not developing and implementing a site-specific SWPPP. Regional Board staff costs for investigating this incident were approximately \$3,960. These factors were considered in assessing the penalty proposed in Paragraph 12, below.

11. Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

<b>Factor</b>	<b>Comment</b>
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	The facility discharged wastewater from the sand filter units without prior authorization, and operated an industrial facility without General Permit coverage. City of Ontario and Regional Board staff repeatedly advised Niagara Bottling to obtain General Permit coverage and to implement pollution control measures at the site. Niagara Bottling did not develop and implement a site-specific SWPPP and pollutants were exposed to storm water.
<b>B. Culpability</b>	The discharger failed to file a NOI for General Permit coverage after multiple requests over three years. However, the discharger obtained coverage for a similar facility it owned at a different location in Ontario. So the discharger was fully aware of the permit requirements. The discharger was not responsive to the City of Ontario or Regional Board staff efforts to bring the site into compliance.
<b>C. Economic Benefit or Savings</b>	Niagara Bottling saved approximately \$6,416 by not obtaining General Permit coverage and by not developing and implementing a SWPPP and Monitoring and Reporting program.
<b>D. Prior History of Violations</b>	No prior history of violations.
<b>E. Staff Costs</b>	Regional Board staff spent approximately 39 hours investigating this incident. The total cost for staff time is \$3,960.
<b>F. Ability to pay</b>	The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

12. After consideration of the above factors, the Assistant Executive Officer proposes civil liability be imposed on Niagara Bottling in the amount of \$30,000 for the violations cited above. This includes \$5,000 in mandatory penalties, \$10,000 for one day of violation and \$15,000 based on flow (3,000 gallons@ \$5/gallon).

#### WAIVER OF HEARING

Niagara Bottling may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$30,000 payable to the State Water Resources Control Board in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Steve Mayville at (951) 782-4992 or Mary Bartholomew at (951) 321-4586.

5/27/08  
Date

Kurt V. Berchtold  
Kurt V. Berchtold  
Assistant Executive Officer

In the matter of:	)	Complaint No. R8-2008-0010
	)	for
Niagara Bottling, LLC	)	Administrative Civil Liability
5675 East Concourses Street	)	
Ontario, CA 91764	)	
	)	
Attn: Brian Hess	)	

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## WAIVER OF HEARING

I agree to waive the right of Niagara Bottling, LLC, to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0010. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$30,000. I understand that I am giving up the right of Niagara Bottling, LLC, to be heard and to argue against allegations made by the Assistant Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

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Date

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for Niagara Bottling, LLC